

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STEVEN L. SMITH,

Plaintiff,

-against-

MICHELE LIODICE, RECORDS
SUPERVISOR,

Defendant.

20-CV-6800 (CM)

ORDER

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff, currently detained in the Berkshire County Jail and House of Correction in Pittsfield, Massachusetts, proceeds *pro se*. He has a pending case against Defendant before Judge Philip Halpern of this Court. *See Smith v. Liodice*, ECF 1:17-CV-7028, 2 (S.D.N.Y. filed Sept. 14, 2017). On August 5, 2020, Judge Halpern issued an order directing Plaintiff to show cause on or before September 8, 2020, why the action under case number 17-CV-7028 should not be dismissed with prejudice “for want of prosecution pursuant to Fed. R. Civ. P. 41(b).” ECF 1:17-CV-7028, 51, at 2. Plaintiff responded by filing a new complaint (ECF No. 1), which the Clerk of Court opened as a new civil action and assigned this case number, No. 20-CV-6800.

The Court has reviewed Plaintiff’s new complaint and concludes that because it arises from the same events and asserts the same claims as in the case before Judge Halpern, that it should liberally be construed as an amended complaint in that action. The Clerk of Court is therefore directed to docket the complaint in this action (ECF No. 1) as an amended complaint in No. 17-CV-7028, and to administratively close this action, No. 20-CV-6231.

The Clerk of Court is further directed not to charge Plaintiff the \$350.00 filing fee for this action, and the Warden or Superintendent having custody of Plaintiff is directed to suspend any previously authorized monetary deduction from Plaintiff’s prison trust account for this lawsuit.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

The Clerk of Court is further directed to docket the complaint in this action (ECF No. 1) as an amended complaint in No. 17-CV-7028.

The Clerk of Court is instructed to administratively close this action.

The Clerk of Court is also directed not to charge Plaintiff the \$350.00 filing fee for this action, and the Warden or Superintendent having custody of Plaintiff is directed to suspend any previously authorized monetary deduction from Plaintiff's prison trust account for this lawsuit.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: August 28, 2020
New York, New York



COLLEEN McMAHON
Chief United States District Judge